

BILL AS INTRODUCED
1996

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ORIGINAL
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Introduced by Committee on Government Operations

Date:

Subject: Right to know; public records

Statement of purpose: This bill proposes to revise the laws relating to access to public records.

AN ACT RELATING TO ACCESS TO PUBLIC RECORDS

It is hereby enacted by the General Assembly of the State of Vermont:

~~SEE P. 10-16-86~~

~~Sec. 1. 1 V.S.A. § 315a is added to read:~~

§ 315a. DEFINITIONS

As used in this subchapter.

(1) "Custodian" means any person properly having personal custody and control of public records. "Custodian" also means any officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records pursuant to a designation under section 218 of Title 3, regardless of whether the records are:

(A) in that person's actual personal custody and control, or

(B) in the possession of an agent of the agency.

~~(2) "Public agency" or "agency" means any agency, board, department,~~

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Sec. 1. 1 V.S.A. § 316 is amended to read:

§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

(a) Any person may inspect or copy any public record or document of a public agency, on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and twelve o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made during customary office hours.

(b) ~~If a photocopying machine or other mechanical device copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy may be charged the actual cost of providing the copy which cost may be collected by the public agency. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means.~~ Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) In the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

(d) The secretary of state, after consultation with the secretary of administration, shall establish the actual cost of providing a copy of a public record that may be charged by state agencies. The secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost" the secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly associated with copying a record. The secretary of state shall adopt, by rule, a uniform schedule of public record charges for state agencies.

(e) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the secretary of state. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges established by the secretary of state until the local legislative body establishes such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.

(f) State agencies shall provide receipts for all moneys received under this section. Notwithstanding any provision of law to the contrary, a state agency may retain moneys collected under this section to the extent such charges represent the actual cost incurred to provide copies under this subchapter. Amounts collected by a state agency under this section for the cost of staff time associated with providing copies shall be deposited in the general fund, unless another disposition or use of revenues received by that agency is specifically authorized by law. Charges collected under this section shall be deposited in the agency's operating account or the general fund, as appropriate, on a monthly basis or whenever the amount totals \$100.00, whichever occurs first.

~~(e)(g)~~ A public agency having photocopying or other mechanical copying

~~facilities~~ the equipment necessary to copy its public records shall utilize ~~those facilities~~ its equipment to produce copies. If the public agency does not have such ~~facilities~~ equipment, nothing in this section shall be construed to require the public agency to provide or arrange for ~~photocopying~~ copying service, to use or permit the use of copying ~~facilities~~ equipment other than its own, to permit operation of its copying ~~facilities~~ equipment by other than its own personnel, to permit removal of the public record by the requesting person for purposes of copying, or to make its own personnel available for making handwritten or typed copies of the public record or document requested.

(h) Standard formats for copies of public records shall be as follows: for copies in paper form, a photocopy of a paper public record or a hard copy print-out of a public record maintained in electronic form; for copies in electronic form, the format in which the record is maintained. Any format other than the formats described in this subsection is a nonstandard format.

(i) If an agency maintains public records in an electronic format, nonexempt public records shall be available for copying in either the standard electronic format or the standard paper format, as designated by the party requesting the records. An agency may, but is not required to, provide copies of public records in a nonstandard format, to create a public record or to convert paper public records to electronic format.

~~(d)(j)~~ A public agency may make reasonable rules to prevent disruption of

operations, to preserve the security of public records or documents, and to protect them from damage.

~~(e)~~(k) Information concerning facilities and sites for the treatment, storage, and disposal of hazardous waste shall be made available to the public under this subchapter in substantially the same manner and to the same degree as such information is made available under the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. chapter 82, subchapter 3, and the Federal Freedom of Information Act, 5 U.S.C. section 552 et seq. In the event of a conflict between the provisions of this subchapter and the cited federal laws, federal law shall govern.

Sec. 2. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND
DOCUMENTS

(a) As used in this subchapter, "public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality or authority of the state or any agency, board, committee, department, branch, instrumentality, commission or authority of any political subdivision of the state.

(b) As used in this subchapter, "public record" or "public document" means all papers, ~~staff reports, individual salaries, salary schedules~~ documents, machine readable materials or any other written or recorded matters.

regardless of their physical form or characteristics, that are produced or acquired in the course of agency business except. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

(c) The following public records are exempt from public inspection and copying:

* * *

(23) any data, records or information developed, discovered, collected or received by or on behalf of faculty, staff, employees or students of the University of Vermont or the Vermont state colleges in the conduct of study, research or creative efforts on medical, scientific, technical, scholarly or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records or information are published, disclosed in an issued patent or publicly released by the institution or its authorized agents. This subdivision applies to, but is not limited to, research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research.

(24) records of, or internal materials prepared for, the deliberations of

any public agency acting in a judicial or quasi-judicial capacity.

(25) passwords, access codes, user identifications, security procedures and similar information the disclosure of which would threaten the safety of persons or the security of public property.

Sec. 3. 10 V.S.A. Sec. 5410 is added to read:

§5410 LOCATION CONFIDENTIAL

All information regarding the location of endangered species sites shall be kept confidential in perpetuity except that the secretary shall disclose this information to the owner of land upon which the species has been located, or to a potential buyer who has a bona fide contract to buy the land and applies to the secretary for disclosure of endangered species information, and to qualified individuals or organizations, public agencies and nonprofit organizations for scientific research or for preservation and planning purposes when the secretary determines that the preservation of the species is not further endangered by the disclosure.

Sec. 4. 32 V.S.A. § 1671(a)(7) is amended to read:

(7) For uncertified copies of records and documents on file, or recorded, a fee of \$1.00 per page shall be charged, with a minimum fee of \$2.00; however, copies of minutes of municipal meetings or meetings of local boards and commissions, copies of grandlists and checklists and copies of any public records that any agency of that political subdivision has deposited with

the clerk shall be available to the public at actual cost;

Sec. 5. REPORT

One year after the effective date of this act, the secretary of state shall survey state and local public agencies covered by this act. The secretary shall identify any issues relating to access, charges and administration that have arisen as a result of the provisions of this act. The secretary shall compile a list of actual cost charges and staff-time charges that have been established by local legislative bodies and determine whether charges differ significantly among municipalities. The secretary shall also compare municipal charges to the charges established for state agencies. The secretary shall file his or her findings, together with any recommended amendments to the access to public records law, with the general assembly on or before January 15, 1998.

ATTESTED TO:

Donald G. Milne
Donald G. Milne
Clerk, House of Representatives

Michael J. Obuchowski
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Stephen W. Webb
PRESIDENT OF THE SENATE

W. Dean 5/8/96
GOVERNOR Date

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~~Sec. 1, I.V.S.A. § 315a is added to read:~~

§ 315a. DEFINITIONS

As used in this subchapter.

(1) "Custodian" means any person lawfully having personal custody and control of public records. "Custodian" also means any officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records pursuant to a designation under section 218 of Title 3, regardless of whether the records are:

(A) in that person's actual personal custody and control, or

(B) in the possession of an agent of the agency.

(2) "Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality or authority of the state or any agency, board, committee, department, branch, commission, instrumentality or authority of any political subdivision of the state.

(3) "Public record" includes all papers, documents, machine readable materials or any other written or recorded matters, regardless of their physical form or characteristics, that are produced or acquired in the course of agency business ~~if they provide evidence of the agency's organization, functions, policies, decisions, procedures, operations or other activities or contain data of informational value.~~ "Public record" also includes computer software created by or on behalf of a public agency and ~~computer software created for a public agency that is not subject to a~~

~~licensing or similar agreement. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.~~

"Public record" does not include:

(A) library and museum materials made or acquired and preserved solely for reference or exhibition purposes;

(B) any voluntary information provided by any person prior to July 1, 1976.

Sec. 2. 1 V.S.A. § 316 is amended to read:

§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

(a) Any person may inspect or copy any public record or document of a public agency, ~~on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and twelve o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made during the agency's customary office hours. If an agency does not have customary office hours, the agency's public records shall be deposited with an agency that keeps customary office hours or the custodian shall establish the place and times during the regular workweek when public records will be available for inspection and copying.~~

(b) Standard formats for copies of public records shall be as follows:

~~for copies in paper form, a photocopy of a paper public record or a hard~~

~~copy print-out of a public record maintained in electronic form, for copies in~~
electronic form, the format in which the record is maintained or a
nonproprietary format. Any format other than the formats described in this
subsection is a nonstandard format.

(c) If an agency maintains public records in an electronic format,
nonexempt public records shall be available for copying in one of the
standard electronic formats or in a standard paper format, as designated by
the party requesting the records; provided that the nonproprietary format
shall be the format the agency, with the advice of the ~~chief information~~
public records advisory board
~~officer and the director of the division of public records, determines shall~~
provide the greatest degree of public access. An agency may, but is not
required to, provide copies of public records in a nonstandard format, to
create a public record or to convert paper public records to electronic format.

(d) Notwithstanding the provisions of subsections (b) and (c) of this
section relating to standard formats, the standard format for all public records
available electronically on the Vermont automated library system (VALS), or
its successor, shall be the format in which they are maintained by the
department of libraries.

~~(b)~~ (e) If a public agency does not have the equipment necessary to copy
its public records, the public agency may charge and collect from the person
requesting the copy an amount equal to the amount the agency has to pay to
have the copy made plus the cost of staff time required to comply with the
~~request. If a photocopying machine or other mechanical device equipment~~

~~maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy may be charged the actual cost of providing the copy which cost may be collected by the public agency. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means.~~

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~~(f) In the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the actual cost of providing the requested copies exceeds \$1.00; (2) the time involved in complying with the request exceeds 15 minutes; (3) the agency agrees to create a public record; or (4) the agency agrees to provide the public record in a nonstandard format. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.~~

~~(g) The secretary of state shall establish the actual cost of providing a copy of a public record that may be charged by public agencies other than political subdivisions. The secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost" the secretary shall consider the following ^{only} factors: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly~~

~~(f) In the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 15 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 15 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.~~

~~associated with copying a record. The secretary shall adopt, by rule, a~~
uniform schedule of public record charges for public agencies other than
political subdivisions. The secretary of administration shall approve the
charges to be established under this subsection before the secretary of state
begins formal rulemaking under chapter 25 of Title 3.

(h) After public hearing, the legislative body of a political subdivision
shall establish actual cost charges for copies of public records. The
legislative body shall also establish the amount that may be charged for staff
time, when such a charge is authorized under this section. To determine
actual cost charges, the legislative body shall use the same factors used by
the secretary of state. If a legislative body fails to establish a uniform
schedule of charges, the charges for that political subdivision shall be ~~at no~~
the uniform schedule of charges established by the secretary of state,
~~and~~ until the local legislative body establishes such a schedule. A schedule
of public records charges shall be posted in prominent locations in the town
offices.

(i) If it is necessary to separate exempt information from nonexempt
information in order to permit the inspection or copying of a record, the
agency shall bear the cost thereof if segregation is necessary because the
agency failed to comply with section 458 of Title 22 relating to segregation of
electronically stored information unless the request for such records covers
more than 100 pages. For purposes of this subsection, a request includes
multiple related requests received within a period of 45 days.

~~(j) Nothing in this section shall exempt any person from paying fees~~

~~otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged. State agencies shall provide receipts for all moneys received under this section. Notwithstanding any provision of law to the contrary, a state agency may retain moneys collected under this section to the extent such charges represent the actual cost incurred to provide copies under this subchapter. Amounts collected by a state agency under this section for the cost of staff time associated with providing copies and for the cost of making copies when the agency does not have the equipment to produce its own copies shall be deposited in the general fund, unless another disposition or use of revenues received by that agency is specifically authorized by law. Charges collected under this section shall be deposited in the agency's operating account or the general fund, as appropriate, on a monthly basis or whenever the amount totals \$100.00, whichever occurs first.~~

~~(e) (k) A public agency having photocopying or other mechanical copying facilities shall utilize may use its own equipment to produce copies. If the public agency does not have such facilities, nothing the equipment to produce its own copies, the agency shall arrange for and provide copies. Nothing in this section shall be construed to require the public agency to provide or arrange for photocopying service, to use or permit the use of requesting person to use copying facilities equipment other than its own, to permit operation of its copying facilities equipment by other than its own personnel, to permit removal of the public record by the requesting person for~~

~~purposes of copying, or to make its own personnel available for making~~
handwritten or typed copies of the public record ~~or document~~ requested.

~~(d) (l) A public agency may make reasonable adopt rules to prevent~~
disruption of operations, to preserve the security of public records ~~or~~
documents, and to protect them from damage. When necessary to ensure that
uninterrupted inspection by one person will not deny or unduly delay access by
another, an agency may establish reasonable time limitations for inspection of
public records.

~~(e) (m) Information concerning facilities and sites for the treatment,~~
storage, and disposal of hazardous waste shall be made available to the public
under this subchapter in substantially the same manner and to the same degree
as such information is made available under the Resource Conservation and
Recovery Act of 1976, as amended, 42 U.S.C. chapter 82, subchapter 3, and
the Federal Freedom of Information Act, 5 U.S.C. section 552 et seq. In the
event of a conflict between the provisions of this subchapter and the cited
federal laws, federal law shall govern.

(n) Public records conveyed through electronic mail systems shall be
managed in accordance with the requirements of section 454 of Title 22. The
public records advisory board shall establish, by rule, specific guidelines for
the management, preservation and retention of public records conveyed
through electronic mail systems, and shall establish retention schedules that
recognize the various categories of electronic mail communications.

Sec. 3. 1 V.S.A. § 317 is amended to read:

~~§ 317. DEFINITIONS, PUBLIC AGENCY, PUBLIC RECORDS AND~~~~DOCUMENTS EXEMPTIONS FROM DISCLOSURE~~

~~(a) As used in this subchapter, A "public agency" or "agency" means any agency, board, department, commission, committee, branch or authority of the state or any agency, board, committee, department, branch, commission or authority of any political subdivision of the state.~~

~~(b) As used in this subchapter, "public record" or "public document" means all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business except:~~

~~(a) The following public records are exempt from public inspection and copying:~~

~~(1) records which by law are designated confidential or by a similar term;~~

~~(2) records which by law may only be disclosed to specifically designated persons;~~

~~(3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the state;~~

~~(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege;~~

~~(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a~~

~~criminal or disciplinary investigation by any police or professional licensing~~

agency; provided, however, public records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of a person and the charge shall be public;

(6) a tax return and related ~~documents~~ public records, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont department of taxes or submitted by a person to any public agency in connection with agency business;

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his designated representative,

(8) test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination;

(9) trade secrets, including, but not limited to, any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do

~~not know it or use it;~~

(10) lists of names compiled or obtained by a public agency ~~when disclosure would violate a person's right to privacy or produce public or private gain~~; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees;

(11) student records at educational institutions funded wholly or in part by state revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as amended;

~~(12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;~~

~~(13) (12) information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof;~~

~~(14) (13) records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation;~~

~~(15) (14) records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public~~

~~employees; however, all contract proposals made or received by the agency shall be public upon execution of the contract with the exception of information to which the bidder asserted, at the time the proposal was submitted, a bona fide claim that the information is proprietary in nature;~~

~~(16) any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the state of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document;~~

~~(17) (15) records of inter-departmental and intra-departmental, whether or not in draft form, communications in any County, City, Town, Village, Town School District, Incorporated School District, Union School District, Consolidated Water District, Fire District county, city, town, village, town school district, incorporated school district, union school district, consolidated water district, fire district, or any other political subdivision of the state to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with 1 V.S.A. § 312; provided that these preliminary records, unless otherwise exempt or privileged under law, shall not be exempt once the policy is determined or action taken or the budget is presented. This subdivision shall only apply to records which contain communications from persons who are elected or appointed officials or employees of the political subdivision and to records of communications within and between departments or, in the case of a school district, within and~~

~~between educational or administrative departments of the school that have~~
been designated as such by the school board;

~~(18)~~ (16) records of the office of internal investigation of the state
 department of public safety, except as provided in section 1923 of Title 20
and except when disciplinary action is taken;

~~(19)~~ (17) records relating to the identity of library patrons or the
 identity of library patrons in regard to the circulation of library materials;

~~(20)~~ information which would reveal the location of archeological
sites and underwater historic properties, except as provided in section 762 of
Title 22;

~~(21)~~ (18) lists of names compiled or obtained by Vermont Life
 magazine for the purpose of developing and maintaining a subscription list,
 which list may be sold or rented in the sole discretion of Vermont Life
 magazine, provided that such discretion is exercised in furtherance of that
 magazine's continued financial viability, and is exercised pursuant to specific
 guidelines adopted by the editor of the magazine;

~~(22)~~ (19) any ~~documents~~ records filed, received, or maintained by
 the agency of development and community affairs with regard to
 administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new
 jobs tax credit; manufacturer's tax credit), ~~except that all such documents~~
~~shall become public records under this section subchapter when; provided~~
that these records shall not be exempt once a tax credit certification has been
~~granted by the secretary of administration, and provided that the unless~~

~~disclosure of such documents does not otherwise records would violate any~~
 provision of Title 32-; (20) any data, records or information
developed, discovered, collected or received by or on behalf of faculty, staff,
employees or students of the University of Vermont or the Vermont state
colleges in the conduct of study, research or creative efforts on medical,
scientific, technical, scholarly or artistic matters, whether such activities are
sponsored alone by the institution or in conjunction with a governmental
body or private entity, until such data, records or information are published,
disclosed in an issued patent or publicly released by the institution or its
authorized agents. This subdivision applies to, but is not limited to, research
notes and laboratory notebooks, lecture notes, manuscripts, creative works,
correspondence, research proposals and agreements, methodologies,
protocols, and the identities of or any personally identifiable information
about participants in research;

(21) records of, or internal materials prepared for, the
deliberations of any public agency acting in a judicial or quasi-judicial
capacity;

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~~(22) records including passwords, access codes, user~~
~~identifications, security procedures and similar information the disclosure of~~
~~which would threaten the safety of persons or the security of public property,~~
~~but with respect to computer software, only those portions of computer~~
~~software which contain such information;~~

~~(23) interagency or intra-agency records of executive branch~~

~~(22) passwords, access codes, user identifications, security
procedures and similar information the disclosure of which would threaten
the safety of persons or the security of public property:~~

~~(23) working drafts of documents or materials that are being
prepared by one person and have not yet been shared with another person or
agency, except for clerical review or preparation.~~

~~state agencies consisting of advice, recommendations, opinions and other material reflecting deliberative or policy-making processes, provided that factual information shall be public when it can be separated and produced without compromising the deliberative process, and provided that any final report, recommendation, opinion, disposition or conclusion by the agency shall be public. The records covered by this subdivision, unless otherwise exempt or privileged under law, shall not be exempt once the final report, recommendation, opinion, disposition or conclusion by the agency is public~~

~~(b) Unless otherwise provided by law, public records covered under this section shall be exempt from public inspection and copying for the period of time established by the original custodial agency or for a period of 50 years after the date they were created or acquired, whichever occurs first. However, if the state archivist, after consultation with the original custodial agency determines that a longer period of exemption is necessary to satisfy the purposes of the exemption, a public record shall remain exempt for the period of time established by the state archivist.~~

Sec. 4. 1 V.S.A. § 318 is amended to read:

§ 318. PROCEDURE

(a) Upon request the custodian of a public record shall promptly produce the record for inspection or copying, except that:

(1) if the public record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date

~~and hour within one calendar week of the request when the public record will be available for examination;~~

(2) if the custodian considers the public record to be exempt from inspection under the provisions of this subchapter, ~~he~~ the custodian shall so certify in writing stating his or her reasons for denial of access to the public record. Such certification shall be made within two business days, unless otherwise provided in subdivision (5) of this subsection. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination. The appeal shall be in writing and shall identify the records that have been requested and denied:

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five days, excepting Saturdays, Sundays, and legal public holidays, after the receipt of such appeal. If an appeal of the denial of the request for public records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination, in writing, of its decision and of the right to request an advisory opinion from the office of the secretary of state under section 318a of this title and of the right to appeal to superior court under section 319 of this title:

(4) if a public record does not exist, the custodian shall certify in writing that the public record does not exist under the name given to him by the applicant or by any other name known to the custodian;

~~(5) in unusual circumstances as herein specified the time limits~~

~~prescribed in this subsection may be extended by written notice to the person~~
 making such request setting forth the reasons for such extension and the date
 on which a determination is expected to be dispatched or a copy obtained. No
 such notice shall specify a date that would result in an extension for more than
 ten working days. As used in this subdivision, "unusual circumstances" means
 to the extent reasonably necessary to the proper processing of the particular
 request:

(A) the need to search for ~~and~~ collect and copy the requested
public records from field facilities or other establishments that are separate
 from the office processing the request;

(B) the need to search for, collect, ~~and~~ appropriately
 examine and copy a voluminous amount of separate and distinct public records
 which are demanded in a single request; ~~or~~

(C) the need for consultation, which shall be conducted with
 all practicable speed, with another agency having a substantial interest in the
 determination of the request or among two or more components of the agency
 having substantial subject matter interest therein, or with the attorney general;

(D) the need to have the public record copied by another
agency or person because the agency does not have the equipment to produce
its own copy.

(b) Any person making a request to any agency for public records under
~~subsection (a) of this section shall be deemed to have exhausted his or her~~

~~administrative remedies with respect to each request if the agency fails to~~
 comply within the applicable time limit provisions of this section. Upon any
 determination by an agency to comply with a request for public records, the
public records shall be made available promptly to the person making such
 request. Any notification of denial of any request for public records under this
 section shall set forth the names and titles or positions of each person
 responsible for the denial of ~~such~~ the request.

Sec. 5. 1 V.S.A. § 318a is added to read:

§ 318a. ADVISORY OPINIONS; SECRETARY OF STATE

(a) Upon request, the secretary of state's office shall issue an advisory opinion to a person aggrieved by the denial of the head of an agency under section 318 of this title. A request for an opinion under this section shall be in writing and shall be filed with the secretary of state within five business days of the date of the denial. The request shall be accompanied by a copy of the complainant's written appeal to the head of the agency and a copy of the written denial. Upon receipt of a request under this section, the office shall notify the head of the agency that an advisory opinion has been requested.

(b) The office shall make such inquiries of the complainant and the person responsible for the denial as are necessary to issue an opinion. Public agencies shall promptly respond to any request for information by the office under this section and, at a minimum, shall provide the office with information concerning the substance of the record necessary to provide a sufficient basis for an opinion. All information provided to the office by an agency concerning

~~the substance of a record that has been denied shall be confidential and shall~~
not be revealed by the person who conducts the inquiry to any person or by the
secretary of state.

(c) Within ten business days of the date a request is filed under this
section, the office shall issue a written decision. The decision, which shall be
advisory only, shall be signed by the secretary of state.

Sec. 6. 1 V.S.A. § 319(a) is amended to read:

(a) Any person aggrieved by the denial of a request for public records
under this subchapter section 318 of this title or a complainant or an agency
aggrieved by an advisory opinion issued by the secretary of state under section
318a of this title may apply to the superior court in the county in which the
complainant resides, or has his or her personal place of business, or in which
the public records are situated, or in the superior court of Washington County,
to enjoin the public agency from withholding agency records and to order the
production of any agency records improperly withheld from the complainant.
In such a case the court shall determine the matter de novo, and may examine
the contents of such agency records in camera to determine whether such
records or any part thereof shall be withheld under any of the exemptions set
forth in section 317 of this title, and the burden is on the agency to sustain its
action.

* * * Grants * * *

Sec. 7. 32 V.S.A. § 405 is added to read:

~~§ 405. INFORMATION FROM GRANTEEES~~

~~(a) A state agency making a grant to a person, other than an individual or a public agency as that term is defined in section 315a of Title 1, shall obtain from the grantee the following information:~~

~~(1) A financial report, including expenses and income, and assets and liabilities for the preceding and current years and as projected for the year for which funds are being sought, and the most current available financial audit or review.~~

~~(2) If the grantee is a nonprofit organization which qualifies for exempt status under the provisions of section 501(c)(3) of the Internal Revenue Code, as amended, and the grant exceeds \$5,000.00, a copy of any form required for tax exempt organizations by the Internal Revenue Service.~~

~~(b) The commissioner of finance and management shall obtain from a private entity that receives a direct appropriation from the state the types of information required to be obtained under subsection (a) of this section.~~

~~(c) For purposes of this section, "grant" means to give or bestow a subsidy or financial assistance from public funds for the purpose of furthering a public undertaking. A grant may be conditioned upon maintenance of a specified standard or upon proportional contributions by the recipient, however, such conditions are not required.~~

Sec. 8. 17 V.S.A. § 2141 is amended to read:

§ 2141. POSTING OF CHECKLIST

At least 30 days before any election the town clerk shall cause copies of ~~the most recent checklist of the persons qualified to vote to be posted in two~~

~~or more public places in the town in addition to being posted at the town~~
 clerk's office. Upon the checklist shall be stated against the name of each
 voter, if possible, the street and number of his residence, and otherwise the
 mailing address of his residence. The town clerk shall make available a copy
 of the list, together with lists of corrections and additions when made, to the
 chairman of each political party in the town, upon request, free of charge.
 Additions or amendments to the checklist may be attached to the checklist by
 means of a separate list. Copies of the list shall be made available to other
 persons at actual cost, and to officers with whom primary petitions are filed
 under section 2357 of this title free of charge.

* * * Public Records Management * * *

Sec. 9. 22 V.S.A. § 451a is added to read:

§ 451a. STATEMENT OF INTENT

(a) The general assembly finds that public records, as that term is
defined in section 315a of Title 1, are essential to the administration of state
and local government.
Public records contain information which allows government programs to
function, provide officials with a basis for making decisions and ensure
continuity with past operations. Public records document the legal
responsibility of government, protect the rights of citizens and provide
citizens with a means of monitoring government programs and measuring the
performance of public officials. State and local government records also
reflect the historical development of the government and of the citizens which

~~it serves. Such records need to be systematically managed to ensure preservation of historically valuable materials, to provide ready access to vital information and to promote the efficient and economical operation of government.~~

(b) The general assembly intends by this chapter to establish a single body of law applicable to all agencies subject to the provisions of the public records law under subchapter 3 of chapter 5 of Title 1 on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the state.

Sec. 10. 22 V.S.A. § 458 is added to read:

§ 458. ELECTRONIC APPLICATION SYSTEMS

Upgrades of electronic application systems for data processing files shall include the ability to separate exempt information from nonexempt information. Data sets that rely on confidential identifiers for record identification, such as Social Security numbers, shall provide for a second identifier to permit data to be accessed without violation of confidentiality or privacy.

* * * Archeological Sites * * *

Sec. 11. 22 V.S.A. § 761(b) is amended to read:

(b) ~~At~~ Notwithstanding the provisions of subsection (b) of section 317 of Title 1, relating to limitations on the period of time public records may remain exempt from disclosure, all information regarding the location of

~~archeological sites and underwater historic properties shall be confidential in perpetuity~~ except that the state archeologist shall provide this information to qualified individuals or organizations, public agencies and nonprofit organization for archeological and scientific research or for preservation and planning purposes when the state archeologist determines that the preservation of these properties is not endangered.

* * * Retention Schedules * * *

Sec. 12. ~~LEGISLATIVE INTENT; RETENTION SCHEDULES~~

The provisions of this act are not intended to alter the public records retention and preservation practices and policies in effect on the effective date of this act.

* * * Enhanced 911 * * *

Sec. 13. 30 V.S.A. § 7059(d) is added to read:

(d) If a municipality has adopted conventional street addressing for enhanced 911 addressing purposes, the municipality shall ensure that an individual who so requests will not have his or her street address and name linked in a municipal public record. The request required by this section shall be in writing and shall be filed with the municipal clerk. Requests under this section shall be confidential.

* * * Town Clerks' Fees * * *

Sec. 14. 32 V.S.A. § 1671(a)(7) is amended to read:

(7) For uncertified copies of records and documents on file, or recorded, a fee of \$1.00 per page shall be charged, with a minimum fee of

~~§2.00; however, copies of minutes of municipal meetings or meetings of local boards and commissions, copies of grandlists and checklists and copies of any other public records deposited with the clerk under section 316 of Title 1 shall be available to the public at actual cost;~~

** * * Miscellaneous Provisions * * **

Sec. 15. TRANSITIONAL PROVISIONS

(a) Notwithstanding the provisions of subsections (b) and (c) of section 316 of Title 1, prior to July 1, 1999 a public agency subject to the provisions of this act shall not be required to convert electronic records from the format used by the agency to a nonproprietary format if the agency does not have the equipment or software to do so; provided that such agencies shall identify electronic recordkeeping standards and implement them as part of their electronic recordkeeping technology plans required under section 2222(a)(10) of Title 3.

(b) During the period prior to July 1, 1999, a public agency subject to the provisions of this act shall insure that any upgrade of its word processing software includes the ability to provide copies of electronic documents in the standard formats described in section 316 of Title 1. The provisions of subsection (a) of this section shall not apply to agencies that fail to comply with the provisions of this subsection.

See P. 23a for Sec. 15a

Sec. 16. EFFECTIVE DATE

~~*This act shall take effect on July 1, 1996 and shall apply to public*~~

~~Sec. 15a. REPORT~~

~~*One year after the effective date of this act, the secretary of state shall survey state and local public agencies covered by this act. The secretary shall identify any issues relating to access, charges and administration that have arisen as a result of the provisions of this act. The secretary shall compile a list of actual cost charges and staff-time charges that have been established by local legislative bodies and determine whether charges differ significantly among municipalities. The secretary shall also compare municipal charges to the charges established for state agencies. The secretary shall file his or her findings, together with any recommended amendments to the access to public records law, with the general assembly on or before January 15, 1998.*~~

~~records produced or acquired by a public agency on and after July 1, 1996~~
~~and to public records produced or acquired prior to that date; provided that~~
~~the amendments contained in~~
~~1 V.S.A. § 317(a), subdivisions (14), relating to contracts, (16), relating to~~
~~internal police investigations and (20), relating to academic research, shall~~
~~not apply to records produced or acquired by a public agency prior to July~~
~~1, 1996.~~

1 ~~schedule of charges, the charges for that political subdivision shall be at no cost until the~~
2 local legislative body establishes such a schedule. A schedule of public records charges
3 shall be posted in prominent locations in the town offices.

4 (i) If it is necessary to separate exempt information from nonexempt information in
5 order to permit the inspection or copying of a record, the agency shall bear the cost of
6 such segregation if segregation is necessary because the agency failed to comply with
7 section 458 of Title 22 relating to segregation of electronically stored information unless
8 the request for such records covers more than 100 pages. For purposes of this subsection,
9 a request includes multiple related requests received within 30 consecutive business days.

10 (j) Nothing in this section shall exempt any person from paying fees otherwise
11 established by law for obtaining copies of public records or documents, but if such fee is
12 established for the copy, no additional costs or fees shall be charged. State agencies shall
13 provide receipts for all moneys received under this section. Notwithstanding any
14 provision of law to the contrary, a state agency may retain moneys collected under this
15 section to the extent such charges represent the actual cost incurred to provide copies
16 under this subchapter. Amounts collected by a state agency under this section for the cost
17 of staff time associated with providing copies and for the cost of making copies when the
18 agency does not have the equipment to produce its own copies shall be deposited in the
19 general fund, unless another disposition or use of revenues received by that agency is
20 specifically authorized by law. Charges collected under this section shall be deposited in

1 ~~the agency's operating account or the general fund, as appropriate, on a monthly basis or~~
2 ~~whenever the amount totals \$100.00, whichever occurs first.~~

3 (e) (k) A public agency ~~having photocopying or other mechanical copying facilities~~
4 ~~shall utilize~~ may use its own equipment to produce copies. If the public agency does not
5 have such facilities, ~~nothing the equipment to produce its own copies, the agency shall~~
6 arrange for and provide copies. Nothing in this section shall be construed to require the
7 public agency to ~~provide or arrange for photocopying service, to use or permit the use of~~
8 requesting person to use copying facilities equipment other than its own, to permit
9 operation of its copying ~~facilities equipment~~ by other than its own personnel, to permit
10 removal of the public record by the requesting person for purposes of copying, or to make
11 its own personnel available for making handwritten or typed copies of the public record
12 ~~or document~~ requested.

13 (d) (l) A public agency may ~~make reasonable~~ adopt rules to prevent disruption of
14 operations, to preserve the security of public records ~~or documents~~, and to protect them
15 from damage. When necessary to ensure that uninterrupted inspection by one person will
16 not deny or unduly delay access by another, an agency may establish reasonable time
17 limitations for inspection of public records.

18 (e) (m) Information concerning facilities and sites for the treatment, storage, and
19 disposal of hazardous waste shall be made available to the public under this subchapter in
20 ~~substantially the same manner and to the same degree as such information is made~~

1 ~~available under the Resource Conservation and Recovery Act of 1976, as amended, 42~~
2 U.S.C. chapter 82, subchapter 3, and the Federal Freedom of Information Act, 5 U.S.C.
3 section 552 et seq. In the event of a conflict between the provisions of this subchapter
4 and the cited federal laws, federal law shall govern.

5 (n) Records conveyed through electronic mail systems shall be managed in
6 accordance with the requirements of section 454 of Title 22. The commissioner of
7 general services shall adopt guidelines that provide clear standards for determining when
8 an electronic mail communication is a public record. In the case of electronic mail
9 communications that are public records, the commissioner shall adopt retention schedules
10 that recognize the various categories of electronic mail messages.

11 Sec. 3. 1 V.S.A. § 317 is amended to read:

12 § 317. ~~DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS~~
13 EXEMPTIONS FROM DISCLOSURE

14 ~~(a) As used in this subchapter, "public agency" or "agency" means any agency, board,~~
15 ~~department, commission, committee, branch or authority of the state or any agency,~~
16 ~~board, committee, department, branch, commission or authority of any political~~
17 ~~subdivision of the state.~~

18 ~~(b) As used in this subchapter, "public record" or "public document" means all~~
19 ~~papers, staff reports, individual salaries, salary schedules or any other written or recorded~~
20 ~~matters produced or acquired in the course of agency business except:~~

1 ~~(a) The following are exempt from public inspection and copying:~~

2 (1) records which by law are designated confidential or by a similar term;

3 (2) records which by law may only be disclosed to specifically designated persons;

4 (3) records which, if made public pursuant to this subchapter, would cause the
5 custodian to violate duly adopted standards of ethics or conduct for any profession
6 regulated by the state;

7 (4) records which, if made public pursuant to this subchapter, would cause the
8 custodian to violate any statutory or common law privilege;

9 (5) records dealing with the detection and investigation of crime, including those
10 maintained on any individual or compiled in the course of a criminal or disciplinary
11 investigation by any police or professional licensing agency; provided, however, records
12 relating to management and direction of a law enforcement agency, police logs and
13 records reflecting the initial arrest of a person and the charge shall be public;

14 (6) a tax return and related ~~documents~~ records, correspondence and certain types of
15 substantiating forms which include the same type of information as in the tax return itself
16 filed with or maintained by the Vermont department of taxes or submitted by a person to
17 any public agency in connection with agency business;

18 (7) ~~personal documents relating to an individual, including information in any files~~
19 ~~maintained to hire, evaluate, promote or discipline any employee of a public agency,~~
20 ~~information in any files relating to personal finances, medical or psychological facts~~

~~concerning any individual or corporation; provided, however, that all information in~~
personnel files of an individual employee of any public agency shall be made available to
that individual employee or his designated representative personal information relating to
an individual; provided that all information in personnel files of an individual employee
of any public agency shall be made available to that individual employee or the
employee's designated representative. "Personal information" means information that
reveals intimate details of an individual's personal life, including any information:

(A) relating to medical or psychological facts concerning any individual; or

(B) that if disclosed, would constitute a clearly unwarranted invasion of
personal privacy;

(8) test questions, scoring keys, and other examination instruments or data used to
administer a license, employment, or academic examination;

(9) trade secrets, including, but not limited to, any formulae, plan, pattern, process,
tool, mechanism, compound, procedure, production data, or compilation of information
which is not patented, which is known only to certain individuals within a commercial
concern, and which gives its user or owner an opportunity to obtain business advantage
over competitors who do not know it or use it;

(10) lists of names compiled or obtained by a public agency ~~when disclosure would~~
~~violate a person's right to privacy or produce public or private gain; provided, however,~~
~~that this section does not apply to lists which are by law made available to the public, or~~

1 ~~to lists of professional or occupational licensees;~~

2 (11) student records at educational institutions funded wholly or in part by state
3 revenue; provided, however, that such records shall be made available upon request under
4 the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L.
5 93-380) and as amended;

6 ~~(12) records concerning formulation of policy where such would constitute a clearly~~
7 ~~unwarranted invasion of personal privacy, if disclosed;~~

8 ~~(13)~~ (12) information pertaining to the location of real or personal property for
9 public agency purposes prior to public announcement of the project and information
10 pertaining to appraisals or purchase price of real or personal property for public purposes
11 prior to the formal award of contracts thereof;

12 ~~(14)~~ (13) records which are relevant to litigation to which the public agency is a
13 party of record, provided all such matters shall be available to the public after ruled
14 discoverable by the court before which the litigation is pending, but in any event upon
15 final termination of the litigation;

16 ~~(15)~~ (14) records relating specifically to negotiation of contracts including but not
17 limited to collective bargaining agreements with public employees; however, all contract
18 proposals made or received by the agency shall be public upon execution of the contract
19 with the exception of information to which the bidder asserted, at the time the proposal
20 was submitted, a bona fide claim that the information is in proprietary nature;

1 ~~(16) any voluntary information provided by an individual, corporation, organization,~~
2 ~~partnership, association, trustee, estate, or any other entity in the state of Vermont, which~~
3 ~~has been gathered prior to the enactment of this subchapter, shall not be considered a~~
4 ~~public document;~~

5 (17) (15) records of inter-departmental and intra-departmental communications in
6 any County, City, Town, Village, Town School District, Incorporated School District,
7 Union School District, Consolidated Water District, Fire District county, city, town,
8 village, town school district, incorporated school district, union school district,
9 consolidated water district, fire district, or any other political subdivision of the state to
10 the extent that they cover other than primarily factual materials and are preliminary to any
11 determination of policy or action or precede the presentation of the budget at a meeting
12 held in accordance with 1 V.S.A. § 312; provided that these preliminary records shall be
13 available for public inspection and copying when the policy is determined or action taken
14 or the budget is presented. This subdivision shall only apply to records which contain
15 communications from persons who are employees of the political subdivision and to
16 records of communications within and between departments that are established by
17 charter or, in the case of a school district, educational or administrative departments of
18 the school that have been designated as such by the school board;

19 (18) (16) records of the office of internal investigation of the state department of
20 ~~public safety, except as provided in section 1923 of Title 20 or when disciplinary action~~

1 ~~is taken,~~

2 ~~(19) (17) records relating to the identity of library patrons or the identity of library~~
3 ~~patrons in regard to the circulation of library materials;~~

4 ~~(20) information which would reveal the location of archeological sites and~~
5 ~~underwater historic properties, except as provided in section 762 of Title 22;~~

6 ~~(21) (18) lists of names compiled or obtained by Vermont Life magazine for the~~
7 ~~purpose of developing and maintaining a subscription list, which list may be sold or~~
8 ~~rented in the sole discretion of Vermont Life magazine, provided that such discretion is~~
9 ~~exercised in furtherance of that magazine's continued financial viability, and is exercised~~
10 ~~pursuant to specific guidelines adopted by the editor of the magazine;~~

11 ~~(22) (19) any documents records filed, received, or maintained by the agency of~~
12 ~~development and community affairs with regard to administration of 32 V.S.A. chapter~~
13 ~~151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit); ~~except~~~~
14 ~~that all such documents shall become public records under this section subchapter when;~~
15 ~~provided that these records shall be available for public inspection and copying once a tax~~
16 ~~credit certification has been granted by the secretary of administration, ~~and provided that~~~~
17 ~~the unless disclosure of such documents ~~does not otherwise~~ records would violate any~~
18 ~~provision of Title 32- ;~~

19 ~~(20) any data, records or information developed, discovered, collected or received~~
20 ~~by or on behalf of faculty, staff, employees or students of the University of Vermont or~~

1 ~~the Vermont state colleges in the conduct of study, research or creative efforts on~~
2 medical, scientific, technical, scholarly or artistic matters, whether such activities are
3 sponsored alone by the institution or in conjunction with a governmental body or private
4 entity, until such data, records or information are published, disclosed in an issued patent
5 or publicly released by the institution or its authorized agents or until the study, research
6 or creative effort is complete. This subdivision applies to, but is not limited to, research
7 notes and laboratory notebooks, lecture notes, manuscripts, creative works,
8 correspondence, research proposals and agreements, methodologies, protocols, and the
9 identities of or any personally identifiable information about participants in research;

10 (21) records of, or internal materials prepared for, the deliberations of any public
11 agency acting in a judicial or quasi-judicial capacity;

12 (22) records including passwords, access codes, user identifications, security
13 procedures and similar information the disclosure of which would threaten the safety of
14 persons or the security of public property, but with respect to computer software, only
15 those portions of computer software which contain such information;

16 (23) personnel records and records relating to the finances of any person the
17 disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

18 (24) inter-agency or intra-agency records consisting of advice, recommendations,
19 opinions and other material reflecting deliberative or policy-making processes, provided
20 that factual information shall be public when it can be separated and produced without

1 ~~compromising the deliberative process, and provided that any final report~~
2 recommendation, opinion, disposition or conclusion by the agency shall be public. The
3 records covered by this exemption shall be available for public inspection and copying
4 once the final report, recommendation, opinion, disposition or conclusion by the agency
5 is public.

6 (b) Unless otherwise provided by law, records covered under this section shall be
7 exempt from public inspection and copying for the period of time established by the
8 original custodial agency or for a period of 50 years after the date they were created or
9 acquired, whichever occurs first. However, if the state archivist, after consultation with
10 the original custodial agency determines that a longer period of exemption is necessary to
11 satisfy the purposes of the exemption, a record shall remain exempt for the period of time
12 established by the state archivist.

13 Sec. 4. 1 V.S.A. § 318 is amended to read:

14 § 318. PROCEDURE

15 (a) Upon request the custodian of a public record shall promptly produce the record
16 for inspection or copying, except that:

17 (1) if the record is in active use or in storage and therefore not available for use at
18 the time the person asks to examine it, the custodian shall so certify this fact in writing to
19 the applicant and set a date and hour within one calendar week of the request when the
20 ~~record will be available for examination;~~

1 ~~(2) if the custodian considers the record to be exempt from inspection under the~~
2 provisions of this subchapter, he shall so certify in writing stating his reasons for denial
3 of access to the record. Such certification shall be made within two business days, unless
4 otherwise provided in subdivision (5) of this subsection. The custodian shall also notify
5 the person of his or her right to appeal to the head of the agency any adverse
6 determination. The appeal shall be in writing and shall identify the records that have
7 been requested and denied;

8 (3) if appealed to the head of the agency, the head of the agency shall make a
9 determination with respect to any appeal within five days, excepting Saturdays, Sundays,
10 and legal public holidays, after the receipt of such appeal. If an appeal of the denial of
11 the request for records is in whole or in part upheld, the agency shall notify the person
12 making such request ~~of the provisions for judicial review of that determination~~, in
13 writing, of its decision and of the right to request an advisory opinion from the office of
14 the secretary of state under section 318a of this title or to appeal to superior court under
15 section 319 of this title;

16 (4) if a record does not exist, the custodian shall certify in writing that the record
17 does not exist under the name given to him by the applicant or by any other name known
18 to the custodian;

19 (5) in unusual circumstances as herein specified the time limits prescribed in this
20 ~~subsection may be extended by written notice to the person making such request setting~~

1 ~~forth the reasons for such extension and the date on which a determination is expected to~~
2 be dispatched or a copy obtained. No such notice shall specify a date that would result in
3 an extension for more than ten working days. As used in this subdivision, "unusual
4 circumstances" means to the extent reasonably necessary to the proper processing of the
5 particular request:

6 (A) the need to search for ~~and~~, collect and copy the requested records from field
7 facilities or other establishments that are separate from the office processing the request;

8 (B) the need to search for, collect, ~~and~~ appropriately examine and copy a
9 voluminous amount of separate and distinct records which are demanded in a single
10 request; or

11 (C) the need for consultation, which shall be conducted with all practicable
12 speed, with another agency having a substantial interest in the determination of the
13 request or among two or more components of the agency having substantial subject
14 matter interest therein, or with the attorney general; :

15 (D) the need to have the record copied by another agency or person because the
16 agency does not have the equipment to produce its own copy.

17 (b) Any person making a request to any agency for records under subsection (a) of
18 this section shall be deemed to have exhausted his or her administrative remedies with
19 respect to each request if the agency fails to comply within the applicable time limit
20 ~~provisions of this section. Upon any determination by an agency to comply with a~~

1 ~~request for records, the records shall be made available promptly to the person making~~
2 such request. Any notification of denial of any request for records under this section shall
3 set forth the names and titles or positions of each person responsible for the denial of ~~such~~
4 the request.

5 Sec. 5. 1 V.S.A. § 318a is added to read:

6 § 318a. ADVISORY OPINIONS; SECRETARY OF STATE

7 (a) Upon request, the secretary of state's office shall issue an advisory opinion to a
8 person aggrieved by the denial of the head of an agency under section 318 of this title. A
9 request for an opinion under this section shall be in writing and shall be filed with the
10 secretary of state within five business days of the date of the denial. The request shall be
11 accompanied by a copy of the complainant's written appeal to the head of the agency and
12 a copy of the written denial. Upon receipt of a request under this section, the office shall
13 notify the head of the agency that an advisory opinion has been requested.

14 (b) The office shall make such inquiries of the complainant and the person responsible
15 for the denial as are necessary to issue an opinion. Public agencies shall promptly
16 respond to any request for information by the office under this section and, at a minimum,
17 shall provide the office with information concerning the substance of the record necessary
18 to provide a sufficient basis for an opinion. All information provided to the office by an
19 agency concerning the substance of a record that has been denied shall be confidential
20 ~~and shall not be revealed by the person who conducts the inquiry to any person or by the~~

1 ~~secretary of state.~~

2 (c) Within ten business days of the date a request is filed under this section, the office
3 shall issue a written decision. The decision, which shall be advisory only, shall be signed
4 by the secretary of state.

5 Sec. 6. 1 V.S.A. § 319 is amended to read:

6 § 319. ENFORCEMENT APPEAL TO SUPERIOR COURT

7 (a) Any person aggrieved by the denial of a request for public records under ~~this~~
8 subchapter section 318 of this title or a complainant or an agency aggrieved by an
9 advisory opinion issued by the secretary of state under section 318a of this title may
10 apply to the superior court in the county in which the complainant resides, or has his or
11 her personal place of business, or in which the public records are situated, or in the
12 superior court of Washington County, to enjoin the public agency from withholding
13 agency records and to order the production of any agency records improperly withheld
14 from the complainant. In such a case the court shall determine the matter de novo, and
15 may examine the contents of such agency records in camera to determine whether such
16 records or any part thereof shall be withheld under any of the exemptions set forth in
17 section 317 of this title, and the burden is on the agency to sustain its action.

18 (b) Except as to cases the court considers of greater importance, proceedings before
19 the superior court, as authorized by this section, and appeals therefrom, take precedence
20 ~~on the docket over all cases and shall be assigned for hearing and trial or for argument at~~

1 ~~the earliest practicable date and expedited in every way.~~

2 (c) If the public agency can show the court that exceptional circumstances exist and
3 that the agency is exercising due diligence in responding to the request, the court may
4 retain jurisdiction and allow the agency additional time to complete its review of the
5 records.

6 (d) ~~The court may assess against the public agency reasonable attorney fees and other~~
7 ~~litigation costs reasonably incurred in any case under this section in which the~~
8 ~~complainant has substantially prevailed. In the case of an appeal involving a person who~~
9 ~~requested an advisory opinion from the secretary of state under section 318a of title, the~~
10 ~~court may assess attorneys fees and costs against a party who did not prevail before both~~
11 ~~the secretary of state and the court.~~

12 * * * Grants * * *

13 Sec. 7. 32 V.S.A. § 405 is added to read:

14 § 405. INFORMATION FROM GRANTEES

15 (a) A state agency making a grant to a person, other than an individual, shall obtain
16 from the grantee the following information:

17 (1) A financial report, including expenses and income for the preceding year and
18 the current year for which funds are being sought, and the most current available financial
19 audit.

20 ~~(2) If the grantee is a nonprofit organization which qualifies for exempt status~~

1 ~~under the provisions of section 501(c)(3) of the Internal Revenue Code, as amended, and~~
2 ~~the grant exceeds \$5,000.00, a copy of any form required for tax exempt organizations by~~
3 ~~the Internal Revenue Service.~~

4 (b) ~~The commissioner of finance and management shall obtain from a private entity~~
5 ~~that receives a direct appropriation from the state the types of information required to be~~
6 ~~obtained under subsection (a) of this section.~~

7 Sec. 8. 17 V.S.A. § 2141 is amended to read:

8 § 2141. POSTING OF CHECKLIST

9 At least 30 days before any election the town clerk shall cause copies of the most
10 recent checklist of the persons qualified to vote to be posted in two or more public places
11 in the town in addition to being posted at the town clerk's office. Upon the checklist shall
12 be stated against the name of each voter, if possible, the street and number of his
13 residence, and otherwise the mailing address of his residence. The town clerk shall make
14 available a copy of the list, together with lists of corrections and additions when made, to
15 the chairman of each political party in the town, upon request, free of charge. Additions
16 or amendments to the checklist may be attached to the checklist by means of a separate
17 list. Copies of the list shall be made available to other persons at actual cost, and to
18 officers with whom primary petitions are filed under section 2357 of this title free of
19 ~~charge.~~

1 ~~***Public Records Management***~~

2 Sec. 9. 22 V.S.A. § 451a is added to read:

3 § 451a. STATEMENT OF INTENT

4 (a) The general assembly finds that public records, as that term is defined in section
5 315a of Title 1, are essential to the administration of state and local government. Public
6 records contain information which allows government programs to function, provide
7 officials with a basis for making decisions and ensure continuity with past operations.
8 Public records document the legal responsibility of government, protect the rights of
9 citizens and provide citizens with a means of monitoring government programs and
10 measuring the performance of public officials. State and local government records also
11 reflect the historical development of the government and of the citizens which it serves.
12 Such records need to be systematically managed to ensure preservation of historically
13 valuable materials, to provide ready access to vital information and to promote the
14 efficient and economical operation of government.

15 (b) The general assembly intends by this chapter to establish a single body of law
16 applicable to all public officers and employees on the subject of public records
17 management and preservation and to ensure that the procedures used to manage and
18 preserve public records will be uniform throughout the state.

1 ~~Sec. 10. 22 V.S.A. § 458 is added to read:~~

2 § 458. ELECTRONIC APPLICATION SYSTEMS

3 (a) Upgrades of electronic application systems for data processing files shall include
4 the ability to separate exempt information from nonexempt information. Data sets that
5 rely on confidential identifiers for record identification, such as Social Security numbers,
6 shall provide for a second identifier to permit data to be accessed without violation of
7 confidentiality or privacy.

8 (b) All new application systems developed after July 1, 1996 shall provide for making
9 electronically stored data available for public access in a file format that is compatible
10 with the majority of computers in use in homes and offices at the time the system is
11 developed.

12 * * * Archeological Sites * * *

13 Sec. 11. 22 V.S.A. § 761(b) is amended to read:

14 (b) All information regarding the location of archeological sites and underwater
15 historic properties shall be confidential in perpetuity except that the state archeologist
16 shall provide this information to qualified individuals or organizations, public agencies
17 and nonprofit organization for archeological and scientific research or for preservation
18 and planning purposes when the state archeologist determines that the preservation of
19 ~~these properties is not endangered.~~

*** Enhanced 911 ***

Sec. 12. 30 V.S.A. § 7059(d) is added to read:

(d) A municipality shall not use street addresses assigned for enhanced 911 addressing purposes for any other purpose unless the person to whom the address is assigned consents to disclosure. The consent required by this subsection shall be in writing and shall be filed with the municipal clerk.

*** Town Clerks' Fees ***

Sec. 13. 32 V.S.A. § 1671(a)(7) is amended to read:

(7) For uncertified copies of records and documents on file, or recorded, a fee of \$1.00 per page shall be charged, with a minimum fee of \$2.00; however, copies of minutes of municipal meetings or meetings of local boards and commissions, copies of grandlists and checklists and copies of any other public records deposited with the clerk under section 316 of Title 1 shall be available to the public at actual cost;

*** Miscellaneous Provisions ***

Sec. 14. APPLICABILITY

(a) This act applies to all public records produced or acquired by a public agency prior to and after July 1, 1996.

(b) Notwithstanding the provisions of subsection (a) of this section, the amendments contained in 1 V.S.A. § 317(a), subdivisions (7), relating to personal information, (14), relating to contracts, (16), relating to internal police investigations, (20), relating to

1 ~~commission, committee, branch, instrumentality or authority of the state or any agency,~~
2 ~~board, committee, department, branch, commission, instrumentality or authority of any~~
3 ~~political subdivision of the state.~~

4 (3) "Public record" or "record" includes all papers, documents, machine readable
5 materials or any other written or recorded matters, regardless of their physical form or
6 characteristics, that are produced or acquired in the course of agency business if they
7 provide evidence of the organization, functions, policies, decisions, procedures,

8 operations or other activities of a public agency or contain data of informational value.

9 "Public record" also includes computer software created by a public agency and computer
10 software created for a public agency that is not subject to a licensing agreement.

11 Individual salaries of and salary schedules relating to public officers and employees of
12 public agencies shall not be exempt from public inspection and copying. "Public record"
13 does not include:

14 (A) library reference and museum materials made or acquired and preserved
15 solely for reference or exhibition purposes;

16 (B) working drafts of documents or materials that have not been released to the
17 person for whom they are being prepared or by whom they must be approved;

18 (C) any voluntary information provided by an individual, corporation,
19 organization, partnership, association, trustee, estate or any other entity in the state of
20 Vermont that was gathered prior to July 1, 1976.

1 ~~Sec. 2. 1 V.S.A. § 316 is amended to read:~~

2 ~~§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS~~

3 (a) Any person may inspect or copy any public record ~~or document~~ of a public
4 agency, ~~on any day other than a Saturday, Sunday, or a legal holiday, between the hours~~
5 ~~of nine o'clock and twelve o'clock in the forenoon and between one o'clock and four~~
6 ~~o'clock in the afternoon, provided, however, if the public agency is not regularly open to~~
7 ~~the public during those hours, inspection or copying may be made during the agency's~~
8 ~~customary office hours. If an agency does not have customary office hours, the agency's~~
9 ~~records shall be deposited with an agency that keeps customary office hours or the~~
10 ~~custodian shall establish the place and times during the regular workweek when records~~
11 ~~will be available for inspection and copying.~~

12 (b) The standard format in paper form shall be either a photocopy or a hard copy
13 print-out of an electronic record. The standard formats in electronic form shall be the
14 following: the format in which the record is maintained and a nonproprietary format.
15 Any format other than the formats described in this subsection shall be considered a
16 nonstandard format.

17 (c) If an agency maintains public records in electronic format, nonexempt public
18 records shall be available for copying in one of the standard electronic formats or in a
19 standard paper format, as designated by the party requesting the records; provided that the
20 nonproprietary format shall be the format the agency, with the advice of the chief

1 ~~information officer and the director of the division of public records, determines, will~~
2 provide the greatest degree of public access. An agency may, but is not required to,
3 provide copies in a nonstandard format, to create a record or to convert paper records to
4 electronic format.

5 (d) Notwithstanding the provisions of subsections (b) and (c) of this section relating to
6 standard formats, the standard format for all records available electronically on the on-
7 line state library system shall be the format in which they are maintained by the state
8 library.

9 ~~(b)~~ (e) If a public agency does not have the equipment necessary to copy the public
10 record, the public agency may charge and collect from the person requesting the copy an
11 amount equal to the amount the agency has to pay to have the copy made plus the cost of
12 staff time associated with complying with the request. If a photocopying machine or
13 other mechanical device equipment maintained for use by a public agency is used by the
14 agency to copy the public record or document requested, the agency may charge and
15 collect from the person requesting the copy may be charged the actual cost of providing
16 the copy which cost may be collected by the public agency. The agency may also charge
17 and collect from the person making the request, the costs associated with mailing or
18 faxing the record.

19 (f) In the following instances an agency may also charge and collect the cost of staff
20 time associated with complying with a request: (1) the actual cost of providing the

1 ~~requested copies exceeds \$1.00; (2) the time involved in complying with the request~~
2 ~~exceeds 15 minutes; (3) the agency agrees to create a record; or (4) the agency agrees to~~
3 ~~provide the record in a nonstandard format. The agency may require that requests subject~~
4 ~~to staff time charges under this subsection be made in writing and that all charges be paid,~~
5 ~~in whole or in part, prior to delivery of the copies. Upon request, the agency shall~~
6 ~~provide an estimate of the charge.~~

7 (g) The secretary of state shall establish the actual cost of providing a copy of a public
8 record that may be charged by public agencies other than political subdivisions. The
9 secretary shall also establish the amount that may be charged for staff time, when such a
10 charge is authorized under this section. To determine "actual cost" the secretary shall
11 consider the following factors: the cost of the paper or the electronic media onto which a
12 public record is copied, a prorated amount for maintenance and replacement of the
13 machine or equipment used to copy the record and any utility charges directly associated
14 with copying a record. The secretary shall adopt, by rule, a uniform schedule of public
15 record charges for public agencies other than political subdivisions.

16 (h) After public hearing, the legislative body of a political subdivision shall establish
17 actual cost charges for copies of public records. The legislative body shall also establish
18 the amount that may be charged for staff time, when such a charge is authorized under
19 this section. To determine actual cost charges, the legislative body shall use the same
20 factors used by the secretary of state. If a legislative body fails to establish a uniform

1 ~~academic research and (24), relating to personnel and financial records, shall not apply to~~
2 ~~records produced or acquired by a public agency prior to July 1, 1996.~~

3 Sec. 15. TRANSITIONAL PROVISIONS

4 (a) Notwithstanding the provisions of subsections (b) and (c) of section 316 of Title 1,
5 prior to July 1, 1999 a public agency subject to the provisions of this act shall not be
6 required to convert electronic records from the format used by the agency to a
7 nonproprietary format if the agency does not have the equipment or software to do so;
8 provided that such agencies shall identify electronic recordkeeping standards and
9 implement them as part of their electronic recordkeeping technology plans required under
10 section 2222(a)(10) of Title 3.

11 (b) During the period prior to July 1, 1999, a public agency subject to the provisions
12 of this act shall insure that any upgrade of its word processing software includes the
13 ability to provide copies of electronic documents in the standard formats described in
14 section 316 of Title 1. The provisions of subsection (a) of this section shall not apply to
15 agencies that fail to comply with the provisions of this subsection.